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09/188,108	11/09/1998	TAKASHISA YAMAMOTO	35.G2285	3915

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EXAMINER

HOM, SHICK C

ART UNIT PAPER NUMBER

2666

DATE MAILED: 11/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/188,108

Applicant(s)

YAMAMOTO ET AL.

Examiner

Shick C Hom

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2002 and 23 September 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) 1-40, 42 and 47 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 41, 43-46 and 48-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 8/22/02 have been fully considered but they are not persuasive.

In response to applicant's argument in page 7 lines 8-21 that the reference fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., timing deviation being from a timing when a switching means of a node device itself connects a first buffer and a first output channel of the node device, in accordance with predetermined information output from another node device) are not recited in the rejected claim 51. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

### ***Specification***

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors.

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Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

***Claim Objections***

3. Claims 41, 46, and 53 are objected to because of the following informalities: in claim 52 line 8-9 delete "a switching means" and insert ---the switching means--- as in claim 51 lines 9-10 for consistency. In claims 41 and 46 lines 7, 9 and 6, 8, respectively, delete "a timing" and insert ---the timing---, for clarity. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

4. Claims 41, 43-46, and 48-52 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 41 line 10 and claim 46 line 9 which recite "a first buffer and a first output channel" are not clear as to whether they're reciting ---said first buffer and said first output channel--- of claim 41 line 8 and claim 46 lines 7-8, respectively, and whether they're related or how related to the

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plurality of buffers of claim 41 line 3 and claim 46 line 2, respectively. In claims 43 and 48 line 2 which recite "a pattern" and "a signal input" are not clear as to whether they're reciting ---said predetermined pattern--- of claim 41 line 6, claim 46 line 5, and ---said signal input--- of claim 41 line 3, claim 46 line 2, respectively. In claim 43 line 3 which recite "a plurality of output channels" is not clear as to how and whether said output channels relate to the output channel of claim 41 line 5 and claim 46 line 4, respectively. In claim 41 lines 7-8 and claim 46 lines 6-7 which recite "a switching means" are not clear as to whether they're reciting ---said switching means--- of claim 41 line 5 and claim 46 line 4, respectively. Further, in claim 41 line 9 and claim 46 line 8 which recite "said switching means" is not clear as to whether it is reciting switching means of claim 41 line 5, claim 46 line 4 or switching means of claim 41 lines 7-8, claim 46 lines 6-7, or a second switching means. In claim 51 line 11 which recite "a respective first buffer" and "a first output channel" are not clear as to how and whether said buffer and said channel are related to the buffers and output channel of claim 51 lines 2 and 4, respectively. In claim 52 line 11 which recite "a first buffer and a first output channel" is not clear as to whether it is reciting ---said first buffer and said first output channel--- as

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in claim 52 lines 9-10. In claim 52 lines 8-9 which recite "a switching means" is not clear as to whether it is reciting --- said switching means--- of claim 52 line 3.

Claims 44-45 and 49-50 are rejected under 35 U.S.C. 112, second paragraph because they depend from rejected claims 41 and 46.

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claim 51 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-66 of U.S. Patent No. 5,859,718. Although the conflicting claims are not identical, they are not patentably

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distinct from each other because the application's claim 51 merely broaden the scope of the U.S. Patent No. 5,859,718 claim 1 by eliminating the variable channel transmission means and the fixed channel reception means. Note in U.S. Patent No. 5,859,718 claim 1 which recite switching signals between input terminals and output terminals including the buffer means for storing signal sent by the input terminal, and the variable channel control means for synchronously altering, in accordance with predetermined patterns so that two or more of said variable channel transmission means do not simultaneously output signals with the same channel clearly anticipate the communication control method having buffers for storing received signal having switching means for altering output channel connected to the buffer using input and output channels which change the output channel according to a predetermined pattern as in claim 51. Claim 1 which recite controlling buffer to output in synchronization with alteration by the channel control means whereby the alteration of said channel control means being control by predetermined patterns and claim 7 which recite weighting the predetermined pattern by employing a time at which one of the variable channel transmission means outputs signals with the respective channels during one pattern cycle clearly anticipate the step of performing a control process to deviate

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the timing when the switching means connect a first buffer and a first output channel as in claim 51. Claim 30 which recite the switching device being provided inside a node device, claim 31 which recite a plurality of node devices being provided, and claim 32 which recite a network wherein switching device is provided for all of the node devices clearly anticipate the communication network comprising a plurality of node devices whereby each of the node devices include the step of performing communication process for communicating predetermined information with another node device as in claim 51. It has been held that the omission of a element and its function is an obvious expedient if the remaining elements perform the same function as before. In re Karlson, 136 USPQ (CCPA). Also note Ex parte Rainu, 168 USPQ 375 (Bd. App. 1969); omission of a reference element whose function is not needed would be obvious to one skilled in the art.

***Allowable Subject Matter***

7. Claims 41, 43-46, 49-50, and 52 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.



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**Conclusion**

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Banks et al. disclose a fibre channel switching system and method. Note col. 2 lines 34-65 which recite the memory modules configured to store each frame in contiguous buffer lines whereby switching is obtained by initiating the write of a received data frame in the next available time slot wherein the memory module storing the beginning of the frame is identified to the transmitting port so that the transmitting port initiates reading the frame beginning at the specified memory module wherein the memory module corresponding to the start of the frame is determined using a memory control circuitry in the receiving port. Col. 2 line 66 to col. 3 line 7 recite messages being passed from a first port to a second port using a crossbar switch configured for time-slotted switch reconfiguration in accordance with a predetermined connectivity pattern, and col. 3 lines 8-23 recite the switch including a plurality of input/output (I/O) ports, memory coupled to each of the ports, shared memory access control circuit associated with each port and coupled to each port whereby the shared memory access control

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circuit includes receive and transmit control circuits and a circuit that determines the buffer line offset that corresponds to the location of the start of the data frame.

**9. Any response to this final action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**or faxed to:**

(703) 872-9314, (for Technology Center 2600 only)

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington. VA., Sixth Floor (2600 Receptionist at (703) 305-4750).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shick Hom whose telephone number is (703) 305-4742. The examiner's regular work schedule is Monday to Friday from 8:00 am to 5:30 pm EST and out of office on alternate Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema Rao, can be reached at (703) 308-5463.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377.

SH



October 31, 2002